(2) Supreme Court, U.S.
FILED
No. 04 383 AUG 19 2004
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IN THE

SUPREME COURT OF THE UNITED STATES

ALECIO RANDLE,
Petitioner,
v.
STATE OF ALABAMA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE ALABAMA SUPREME COURT

SUPPLEMENTAL APPENDIX

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APPENDIX F:	SUPREME COURT OF ALABAMA DENIAL OF PETITION FOR WRIT OF CERTIORARI [Appeal by Trial Counsel]
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APPENDIX F

IN THE SUPREME COURT OF ALABAMA

May 17, 2002

1011056

Ex parte Alecio M. Randle. PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS (In re: Alecio Montenez Randle v. State of Alabama) (Madison Circuit Court: CC01-736JLB; Criminal Appeals : CR-00-2278).

CERTIFICATE OF JUDGMENT

Writ Denied

The above cause having been duly submitted, IT IS CONSIDERED AND ORDERED that the petition for writ of certiorari is denied.

COST TAXED TO PETITIONER.

Writ Denied - No Opinion

HARWOOD, J. - Moore, C.J., and See, Brown, and Stuart, JJ., concur.

I Robert G. Esdale, Sr., as Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appear(s) of record in said Court.

Witness my hand this 17th day of May, 2002.

"S/Robert G. Esdale, Sr., Clerk"
Supreme Court of Alabama

APPENDIX G

Court of Criminal Appeals
Sate of Alabama
[illegible]ial Building, 300 Dexter Avenue
P.O. Box 301555
Montgomery, AL 36130-1555

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ALA COURT CRIMINAL APPEALS

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PAMELA W. BASCHAB
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MEMORANDUM

CR-02-2278

Madison Circuit Court CC-01-736JLB

Alecio Montenez Randle v. State of Alabama

WISE, Judge.

Alecio Montenez Randle was convicted of three counts of capital [illegible]violation under § 13A-5-4[illegible].) (10), Ala. Code [illegible]s sentenced to life imprison[illegible]nt without the possi[illegible] parole. This appeal followed, in which he raises the following issues for review.

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First, Randle contends that the trial court erred to reversal when it denied his motion to continue the trial. In support of his argument, he alleges that the State failed to comply with the "open file" discovery orders of the court, as mandated by the Alabama Supreme Court in Ex parte Monk, 557 So. 2d 832 (Ala. 1989), when the prosecution made late disclosure of certain witness statements. He alleges that due to the State's failure to disclose such evidence in a timely manner, he was unable to investigate and prepare a proper rebuttal or defense. Thus, Randle argues, he was grossly prejudiced by a denial of his right to effective representation and due process of law. The State contends that the witness statements in question were disclosed soon after the testimony was received. The State further contends that the statements were merely cumulative evidence from which Randle suffered no real prejudice.

> "The reversal of a conviction because of the refusal of the trial judge to grant a continuance requires 'a positive demonstration of abuse of judicial discretion.'... 'This Court must determine whether or not there has been an abuse of discretion in light of the circumstances of each case, looking particularly to those reasons that defendant presented to the trial judge.'..."'"

Hays v. State, 518 So. 2d 749, 757 (Ala. Crim. App. 1985) (citations omitted).

The record before us shows that defense counsel's motion for continuance was grounded on his inability to effectively prepare a defense to certain evidence, which he contends had only been produced by the State in the "eleventh hour', rather than pursuant to the discovery orders of the trial court.

Based on the facts and circumstances presented in open court, the trial court denied defense counsel's motion for a continuance on May 10, 2001, approximately one month prior to the June 8, 2001 trial setting. The record also reveals that, after certifying compliance with the discovery order of the trial court, the State continued to supplement the information supplied to defense counsel up until the eve of trial. Defense counsel was in receipt of initial responses to the discovery requests propounded by him to the State, according to his own statements at the motion hearing. We find no reversible error in the trial court's denial of the motion for a continuance.

"It is well settled that a motion for a continuance is addressed to the sound discretion of the trial court and that, absent a showing of abuse of that discretion, the trial court's decision on the matter will not be overturned on appeal. Arnold v. State, 601 So. 2d 145 (Ala. Crim. App. 1992). In addition, the remedy for violations of discovery rules rests within the sound discretion of the trial court and to support a claim for reversal for the exercise of that discretion, the accused must show prejudice to substantial rights. Morrison v. State, 601 So. 2d 165 (Ala. Crim. App. 1992).

Although the only evidence that remained undisclosed, according to Randle, was the identity of two newly discovered witnesses and a tape recording of a witness Randle expected to testify in his behalf, Randle argues that he was substantially prejudiced by the State's nondisclosure. Because the record before us shows that this information was disclosed soon after its receipt or discovery by the State, we are unable to see how Randle's substantial rights were prejudiced. We affirm the trial court as to this issue.

Next, Randle argues that the State improperly introduced evidence of his being featured of the nationally syndicated television show "America's Most Wanted", causing him to be substantially prejudiced and violating his due process rights. He contends that his conviction and sentence should be reversed on this basis. We note, however, that he does not specifically state how he was prejudiced.

The record reflects, and Randle admits in his brief, that he took flight from the state of Alabama after his commission of the acts made the subject of his conviction. Additional facts from the record show that Investigator William Payne, who testified at trial, was involved in diligent efforts to locate Randle after the murders. He was, in part, responsible for having the crimes featured on television. (R.722-723). The State elicited testimony from Payne regarding his efforts to find Randle, including gaining the assistance of the FBI and "America's Most Wanted". Randle objected to this reference, citing only Rule 403, Ala. R. Evid., in support of his contention that this evidence should have been excluded. Randle concedes that the State is authorized to show evidence of flight, but argues that the prejudicial effect of the admission of testimony that he had been featured on "America's Most Wanted" allowed an improper inference that he was the subject of a nationwide manhunt which prejudiced him before the jury. The State contends there was no error, because admission of this information was merely cumulative evidence of facts that had been independently proven through other witnesses and exhibits.

This Court has previously held that "... [t]he determination of whether evidence is relevant and therefore admissible rests within the sound discretion of the trial court and will not be disturbed on appeal absent a showing of an abuse of discretion. Jennings v. State, 513 So. 2d 91, 95 Ala. Crim. App. 1987)..." Nichols v. State, 624 So. 2d 1328, 1338 (Ala. Crim.

App. 1992). See also Ex parte Pope, 562 So. 2d 131, 134 (Ala. 1989); cert. Denied sub nom. Pope v. Alabama, 498 U.S. 841 (1990).

It has long been the law in Alabama that the introduction of evidence of flight is relevant as an inference of a consciousness of guilt on the part of the defendant and the weight that is attached to such evidence is within the province of the jury under proper instructions from the court. See e.g., Ex parte Clark, 728 So. 2d 1126, 1136-37 (Ala. 1998) (citing Bowles v. State, 58 Ala. 335, 338 (1877); see also C. Gamble, McElroy's Alabama Evidence § 190.01 (1) (5th Ed. 1996); Beaver v. State, 455 So. 2d 253 (Ala. Crim. App. 1984). If Randle alleges prejudice stemming from the inference of guilt that his flight suggests, we cannot agree.

In a general sense, the trial court was well within its discretion to allow the introduction of this evidence on purely relevancy grounds. "Any fact which has casual connection or relation to another fact, so as to make the other fact either more or less probable, is competent or relevant.' Further, evidence is relevant if it has any probative value, however slight, upon a matter at issue in the case.' "Jennings v. State, 513 So. 2d 91, 95-96 (Ala. Crim. App. 1987) (quoting Ex parte Woods v. State, 473 So. 2d 591, 594 (Ala. Crim. App. 1985).

The testimony regarding Randle's appearance on "America's Most Wanted" was not so remote or so unconnected with the crime than its probative value was outweighed by its prejudicial effect. Nothing more than the objective fact that this case was resolved and Randle was arrested in Arizona after the episode aired was ever entered into evidence. Furthermore, Randle himself testified as to his leaving Alabama in a friend's car, going first to Illinois and ultimately to Arizona before being arrested and charges with his crimes. He testified that he left Alabama because he was afraid and

wanted to be with his family. Because there was no substantial prejudice to Randle's rights and the record reveals no abuse of discretion in admission of Payne's testimony, we affirm as to this issue.

For all of the foregoing reasons, this case is due to be affirmed.

AFFIRMED.

McMillan, P.J., and Cobb and Baschab, JJ., concur. Shaw, J., concurs in the result.